Index

Abuse of power, 683-684, 687, 689, 691, 696, Administrative law-cont. 698 normative foundations, 231-239 Access to courts political theory, 237-239 courts, 517 public sector ombudsman, 590-591 documents, to, 519-520 traditional view, 231-235 lawyers, to, 711 Administrative tribunals, 248-249 Advertising of tobacco, 312-313 legal aid, 517 Accountability Advice, 538-539 audits, 335-336 AIDS/HIV, 131 dangerous dogs, 290 Ambulance service, 328 democracy, 615-616 Annulment actions, 127 European Central Bank, 151-153 Apartheid, 187, 189-190, 621-623 international law, 615-616 Appeals ministers, report on, 130 administrative decision-making, 132 public authorities, 482-483, 492 asylum seekers, 135 public finance, 523 disciplinary proceedings, 321-322 public interest, 482-483 habeas corpus, 40-41 public service, 335-336 housing, 132 regulation, 290 Immigration Appeal Tribunal, 527 Scotland, 523 judicial review, 101-105, 653-654, 667 security services, 315 leave to remain, exceptional, 716-717 UK Constitution, 411, 412, 419 Pensions Ombudsman, 531-532 Acquis communautaire, 159-160 proportionality, 93, 101-105 Administrative action Registrar of Civil Appeals, abolition of, 123 EC law, 249-250 route of, 517, 700 damages, 21-30 social security, 142, 327 ex gratia compensation, 24-28 Arbitrators, 719-720 Parliamentary Commissioner for Armed forces. Administration, 21-30 citizens in uniform doctrine, 267-281 remedies, 21-30 Criminal Injuries Compensation, 529 wrongful, 21-30 detention, 708-709 Administrative Court, establishment of, 700 devolution, 12-13 Administrative decision-making European Convention on Human Rights, appeals, 132 discretion, 117, 120-121 Human Rights Act 1998, 708-709 homelessness, 113-121 judicial review, 680 housing, 132 legitimate expectations, 529 judicial review, 110-122, 494-514, 653-656, Northern Ireland, 12-13, 268-272 667, 670-674, 678-679 police, assisting the, 267-268 legitimate expectations, 688-690, 693, 695, rationality, 529 697 riots, 274-277 local authorities, 113-121 sex discrimination, 125 Mental Health Review Tribunal, 494-514 sexual orientation, 132-133, 318, 680 self scrutiny of, 120-121 use of force, 268-272, 278-281 Administrative law Arms to Iraq Inquiry, 1 judicial review, 669-670, 676-677 legal theory, 237-239 immigration, 313 legitimate expectations, 682-683, 695-697 lawfulness, 535-536

Bias-cont nemo judex rule, 456-475 police questioning, 140 New Zealand, 58, 469-471, 474-475,469 reasonableness, 535 non-financial interests, 457-472 Assault, 64 personal gain, 464-465 Assembly. See Freedom of assembly Pinochet case, 456-475 Assimilation, 540-542 separation of powers, 45-60 Assisted reproduction, 71-72 Association agreements, 705-706 South Africa, 470-471 test for, 57-58 Asylum seekers Bills of Rights appeals, 135 entrenchment, 205-206 bad faith, 134 exceptional leave to remain, 317 South Africa, 622 gypsies, 319, 714-715 sovereignty, 217 Birds, 320 hearings, failure to attend, 716 Bloody Sunday. See Saville Tribunal on Bloody human dignity, 62-63 internal relocation of, 715 judicial review, 654-655, 665 British Broadcasting Corporation, 518 persecution, 62-63, 319 British Constitution. See UK Constitution non-state agents, by, 714-715 Broadcasting BBC, 518 procedural rules, invalidity of, 716 privacy, 124, 517-518 support, 528 trials, 517, 701 Audits, 335-336 Australia bias, 57-58, 469-474 Canada, 244-245 Capital punishment. See Death penalty Constitutions, 609-611 Care, children in international law, 617 local authorities, 724-725 judiciary, 469-474 legislation, inter-governmental applicability negligence, 724-725 race discrimination, 311 of, 19-20 monarchy and, 3-6, 609-610 sexual abuse, 724-725 Caribbean Constitutions, 573-578 referendum on the monarchy, 3-6 Case stated, 719 religion, 260, 261-262 Central banks. See Bank of England, European republicanism, 3-6 Central Bank Bahamas, 317, 573-575, 577-578 Centralisation, 618-619 Bank of England, 163-164 Certiorari, 232 Banks. See Bank of England, European Central Charges. See Criminal charges Bank Charities, 260-261 Chief Surveillance Commissioner, report of, Bans, 640-641, 644-647 Barristers, keeping up to date with authorities Children and, 322 care, treatment in, 66-67 BBC, 518 Child Care Index, lawfulness of, 530 Best Value, 322-323 Better Regulation Task Force, 282-283, fair trials, 66, 315-316 Her Majesty's Pleasure, detention at, 288-305 315-316, 537 Bias HIV tests on, 131 arbitrators, 719-720 human dignity, 66-67 Australia, 57-58, 469-474 inhuman or degrading treatment, 315-316 automatic disqualification, 456-475 medical treatment, 68-69 causes, 464-467 reporting restrictions, 538 de minimis rule, 469-470 sentencing, 315-316 fair trials, 516, 527, 714 favours, 464-467 trials of, 538 financial interests, 457-472 welfare of the child, 131 Citizen's Charter, 583 France, 331-333 history of rule against, 456-461 Citizens in uniform doctrine judiciary, 45-60, 324, 331-333, 456-475, armed forces, 267-281 human rights, 266-281 515-516 jury trials, 527 Human Rights Act 1998, 278-281 natural justice, 719-720

judicial application of, 266-267

Citizens in uniform doctrine-cont. Constitutional law-cont. succession, skipping a generation in Royal, Northern Ireland, 268-272 origins of, 272-277 568-572 university professors, independence of, police, 267-268, 274-275 727-728 proportionality, 278-281 Constitutions. See also UK Constitution public defence, 266-281 Bahamas, 573-575, 577-578 reasonableness, 280 Australia, 609-611 riots, 274-277 Caribbean, 573-578 use of force, 266-272, 278-281 death penalty, 573-578 Citizenship Fiji, 619-621, 623-624 judicial review, 320-321 interpretation, 603 proportionality, 320-321 UK Constitution, 412 modelling, 606-624 new constitutions, 619-624 Civil and political rights, 182-183 Civil liberties, 413-414. See also Human rights Norway, 595-597 Civil List, 703 property and, 336-337 Civil service, 315, 710 right to life, 573-575 South Africa, 187-192, 610-611, 621-624 Civil War, 212-216 written, 607-609 Commission for Health Improvement, 130 Commonwealth Construction. See Statutory interpretation constitutional modelling, 606-624 Contempt, 35 Contracts for legal advice and assistance, 307 Fiji. 619 international law, domestic effect of, 606-624 Conventions, constitutional, 242 Corporal punishment, 67 monarchy, 572 Correspondence, interference with, 711-712 South Africa, 621 UK Constitution, 244-247 Corruption, 133 Costs, 659-661 Commonwealth Development Corporation, Councillors, conduct of, 532-533 142 Community Legal Service, 657 Counsel. See Barristers Council of Tribunals, 310 Compensation. See also Damages Criminal charges administrative action, 24-28 driving offences, 146-148 deportation, 134-135 European Convention on Human Rights, ex gratia, 24-25, 134-135 France, 329-331 144, 146-148 maladministration, 24-28 France, 144, 146-148 Criminal Defence Service, establishment of, 123 medical treatment, warnings about, 329-331 Criminal Cases Review Commission, 369 Parliamentary Commissioner for Administration, 24-28 Criminal Injuries Compensation, 529 Criminal offences. See also Criminal charges, Competition, 164-165 Compromise, 549-550, 664-668 Life sentences, Particular offences (eg Corruption), Prosecutions Computer misuse, 127-128 armed forces, 529 Confidentiality official secrets, 701-702 football, 134 freedom of assembly, 645-646 prescriptions, 308 seizure of royalties, 701-702 judicial review, 659 public interest immunity, 519 Confiscation, 314 Crown. See also Executive, Monarchy Conscience. See Freedom of thought, devolution, 7-20 conscience and religion legislation, presumption that it does not bind Constitutional law the, 17-20 Commonwealth, 606-624 death penalty, 573-581 Northern Ireland, 9-10, 12-14 reserved matters, 8-10 France, 727-728 international law, domestic effect of, 606-624 Scotland, 8-9, 11-12 judicial review, 232, 672-674 statutes, applicability to, 7-20 justification, 212-220 Wales, 9 Crown Office list, 531 modelling, 606-624

Custody. See also Detention human dignity, 65-67

time limits, 31-32

treatment in, 65-67

monarchy and succession, 568-572

Parliament, 211

politics, 374

sovereignty, 212-220

Customary international law, 622-623

Damages. See also Compensation administrative action, wrongful, 21-30

EC law, 126

exemplary, 539

member state liability, 126

misfeasance in public office, 539

Parliamentary Commissioner for

Administration, 21-30

Dangerous dogs

accountability, 290

Better Regulation Task Force, 282-283, 288-305

criteria adopted by, 288-297, 299,

302-305 omissions, 298-299

breeds, types of, 284-291, 295

castration, effects of, 285

consistency, 292-293

deaths caused by, 283-284

efficiency and effectiveness, 299-300

enforceability of measures against, 294-296 genetic factors, 285-286, 291-292

'knee-jerk responses', avoiding, 296

legislative failure, 282-305

policy objectives, reconciliation of

contradictory, 297 proportionality, 293

public support for measures against, 294, 299

regime under 1991 Act, 286-288

regulatory failure and, 282-305

risks from dogs, 283-288

targeting, 291-292

transparency, 289-290

unintended consequences, avoidance of, 296-297

Data protection, 309

Death penalty

Bahamas, 317, 573-575, 577-578

Caribbean Constitutions, 573-578

constitutional rights, 573-581

delay, 573-574

inhuman and degrading treatment, 575-576

Inter-American Commission on Human Rights, 317, 573

Inter-American Convention on Human

Rights, 574

interpretation, 575-578

legitimate expectations, 573-581

right to life, 573-575

treaties, 578-581

Decision-making. See also Administrative decision-making

discretion, 368, 370

judgment, 368, 369

Declarations of incompatibility, 359, 365-366

Defamation

freedom of expression, 129, 351-357

European Convention on Human Rights, 355-356

human dignity, 74-75

parliament,

privilege, breach of, 556-559

proceedings, 533

political information, 351-357

qualified privilege, 129, 351-357

Defence. See Public defence

death penalty, 573-574

delegated legislation, 535

European Convention on Human Rights, 133

fair trials, 133

Delegated legislation

data protection, 309

European Convention on Human Rights, 318

forms of, 366-367

House of Lords, 195-196

Human Rights Act 1998, 358-373

interpretation, 358, 361-363, 379-380 judicial review, 528-529

judiciary, 379-380

ultra vires, 321

Democracy

accountability, 651-616

constitutional watchdogs, 553-555

democratic deficit, 616

European Convention on Human Rights,

441-444

freedom of expression, 626

international law, 615-616

judicial review, 669-670, 672-673, 676-677, 679-680

Parliament, 553-555

public protests, 630

second chamber, 554-555

sovereignty, 228

UK Constitution, 392

Demonstrations. See Public protests

Deportation

compensation, 134-135

family life, right to respect for, 728-729

France, 728-729

national security, 715-716

private life, right to respect for, 728-729

same sex relationships, 728-729

Detention. See also Habeas corpus

armed forces, 708-709 children, 315-316, 537

European Convention on Human Rights,

42-43, 710-711

Human Rights Act 1998, 708-709 illegal entrants, vehicles used for, 314

inhuman and degrading treatment, 315-316

Her Majesty's Pleasure, at, 315-316, 537

mental disabilities, 38-39, 710-711

police, reviews by, 326-327

[2000] P.L. WINTER © SWEET & MAXWELL AND CONTRIBUTORS

Devolution armed forces, 12-13 Crown applicability of statutes to, 7-20 reserved matters, 8-14 European Convention on Human Rights, 309, 526 executive, applicability of statutes to, 7-20 legislation, intention, 8-11 inter-governmental applicability of, 7-20 power, 8-11 presumption of obedience to, 17-20 Memorandum of Understanding, 124 papers, access to earlier, 309-310 reports, 140 reserved matters, 8-14 seizure, 13 self-incrimination, privilege against, 526 statutes, inter-governmental applicability of, 7-20 statutory interpretation, 78 UK Constitution, 386-387, 396-398, 402-404 Dignity. See Human dignity Direct effect associations agreements, 705-706 directives, 706 EC law, 80, 250, 523, 705-706 environmental impact assessment, 523 international law, 612 public authorities, 476 Director of Public Prosecutions, 560-561 Disability discrimination, 125, 521 Disabled persons. See also Mental disabilities, Special educational needs discrimination, 125, 521 duty of care, 143 school pupils, 143 Disciplinary proceedings appeals, 321-322 European Convention on Human Rights, 144-146 fair trials, 144-146 France, 144-146 independent and impartial tribunals, 145-146 malicious prosecution, 328 prisoners' rights, 65-66 Discretion administrative decision-making, 117, 119-120 decision-making, 368 guidelines, 371-372 health authority resources, 135-136 interpretation, 372 judgment, confusion with, 372-373

distinguishing from, 368-373

legitimate expectations, 688-689, 694-695

judiciary, 372-373

local authorities, 372-373

Discretion-cont. needs, 372 social security, 372 subjectivity, 368 Discrimination. See also Equal treatment, Race discrimination, Sex discrimination causes of action, survival of, 704 differentiation, as, 189 disability, 125, 521 European Charter of Fundamental Rights, 179-180 European Convention on Human Rights, 562 human dignity, 74 indirect, 188, 189 police, 528 religion, 260 sexual orientation, 74 South Africa, 187-192 victimisation, 528 Documents, access to, 519-520 Dogs. See Dangerous dogs Driving offences, 146-148 Dualism, 614 Duty of care ambulance service, 328 disabled persons, 143 dyslexics, 327-328 local authorities, 538 police, towards, 722 psychiatric harm, 538 school pupils, 143 Dyslexics, 327-328, 724 EC law acquis communautaire, 159-160 administrative action, 249-250 annulment actions, 127 association agreements, 705-706 birds, shooting of, 320 breach of, 126, 723-724 consent to, 206 damages, 126 direct effect, 80, 250, 523

directives, direct effect of, 523 documents, access to, 519-520 environmental impact assessment, 523 equal treatment, 562-567 European Court of Justice, 185-186, 484-485 Factortame case, payment of claims, 706 fines, 127 fishing vessels, 126 implied repeal doctrine, 250 injunctions restraining implementation of directives, 312-313 judicial review, 320 judiciary, 249 legal profession, 523 legitimate expectations, 695

EC law-cont. European Charter of Fundamental Rights-cont. member state liability, 126 economic rights, 183-184 misfeasance in public office, 723-724 enforcement, 182, 184-185 passport control, 126-127 equal pay, 179 pollution, 126, 705 European Convention on Human Rights, proportionality, 92, 95-96, 103-09 180-183, 185-186 public authorities, 484-486 European Court of Justice, role of, 185-186 race discrimination, 562-567 evidence, obtained by compulsion, 317-318 ship registration, 126 executive policies, compliance of, 184-185 sovereignty of, 206-207, 249-250 expansion of EU, consequences of, 181 statutory interpretation, 80-82 human rights commission, establishment of, tobacco advertising, 312-313 transposition into national law of, 80-81 individual right of complaint, 184-185 UK Constitution, 159-160, 162 legislation, compliance with, 184-185 Economic rights, 183 nature of rights in, 182-184 Education. See also Schools persons drawing up, 183-184 legitimate expectations, 136 reports, 185, 706 dyslexics, duty of care owed to, 327-328, 724 Social Chapter, 179 negligence, 724 social rights, 179, 181, 183-184 performance-related pay, 704-705 Treaties of EU, relationship with, 185-186 special educational needs, 312, 369-370 Treaty on European Union, 179 universities, 530, 727-728 European Convention on Human Rights. See Elections also Fair trials, Human Rights Act 1998, Home Affairs Select Committee 4th Report, Independent and impartial tribunals response to, 125 acceptance, 446-447 immigration, 522-523 access to lawyers, 711 legitimate expectations, 136 armed forces, 132 pre-election pledges, 136 assisted reproduction, 71-72 Employment civil rights and obligations, 144-145 equal treatment, 562-563 colonial instability, 449 race discrimination, 564 Communist threat, 448-449 tribunals, 134 correspondence, 711-712 unfair dismissal, 521 corporal punishment, 67 working time, 706 courts, duties of lower, 713 Employment tribunals, 134 criminal charges, 144, 146-148 Entry, powers of, 314 defamation, 355-356 Environment. See also Pollution delay, 133 directives, direct effect of, 523 delegated legislation, 318 EC law, 523 democracy, preserving, 441-444 environmental impact assessment, 126, 523, detention, 42-43, 710-711 725-726 devolution, 309, 526 planning, 725-726 disciplinary proceedings, 144-146 Scotland, 126 discrimination, 562 United States, comparison with, 156-157 waste, 525 drafting, 439 driving offences, 146-148 Equal pay, 310 European Charter of Fundamental Rights, Equal treatment 180-183, 185-186 EC law, 562-567 employment, 562-563 European Court of Human Rights, 441, 452-453, 714 race discrimination, 566 European Union, accession to, 186 European Central Bank, 151-153 France, 144-148 European Charter of Fundamental Rights, 178-186 freedom of assembly, 630-648 freedom of expression, 88-91, 625-648 agreement of rights to be contained in 182-184 Government's perception of, 438-455 background to, 178-180 habeas corpus, 32, 42-43 cases for and against, 180-182 human dignity, 75 civil and political rights, 182-184 international law, appropriate subjects of, 450

interpretation, 86-91, 381-382

judicial review, 674, 677-681

context, 178-180

discrimination, 179-180

European Convention on Human Rights-cont. Executive-cont. judiciary, 250-251 fair trials, 133 temporary, 515 internal control, 545-546 mail, interference with, 711-712 international law, 615-617 margin of appreciation, 446, 639, 641-642 judiciary and, 51-53, 170-171, 377-378 medical treatment, 69, 71-72 life sentences, 377-378 mental disabilities, 42-43, 710-711 rule of law, control by, 19 Norway, 603-605 sentencing, 316 optional provisions, 451-452 statutes, inter-governmental applicability of, acceptance of, 452-454 7-20 rejection of, 447-452 structure, 545-546 Parliamentary sovereignty, 380-382, 444-446. UK Constitution, 545-546 449-450 Executive Non-Departmental Public Bodies political pressure, 453-454 reports, 524 proportional representation, 444 Expulsion. See Deportation proportionality, 639-642 Extradition public authorities, 492-4934 computer misuse, 127-128 public protests, 625, 627-628 crime, whether offence is extradition, religion, 254-255, 258-259,263-265 707-708 retrospectivity, 87-88 habeas corpus, 37-38, 41 right to life, 439 Ireland, 313 rulings, potential effects of, 714 Pinochet case, 524 self-incrimination, privilege against, 526 supervised release, escape from, 707 sexual orientation, 132 social security, 145 Fair trials. See also Independent and impartial state sovereignty, 449 tribunals temporary judges, 515 bias, 516, 527, 714 terms, negotiating, 438-441 children, 66, 315-316 terrorism, 711 corruption, presumption of, 133 torture, 87 delay, 133 UK Constitution, 165, 250-251, 386-387, disciplinary hearings, 144-146 402-403, 431, 434-436 evidence, 316-317 European Court of Human Rights, 441, France, 144-148 452-453, 714 human dignity, 66 European Union. See also EC law, European Human Rights Act 1998, 136-137, 360-367 Charter of Fundamental Rights interception of communications, 702 developments in, white paper on, 707 judiciary, part-time, 306 enlargement, 523 jury trials, 526-527 European Central Bank, 151-153 legitimate expectations, 136-137 European Convention on Human Rights, privacy, 702 accession to, 186 prosecutions, 136-137 expansion of, 181 Scotland, 306 judicial review, 238-239 Fairness. See also Fair trials single currency, 155-156 informers, 712-713 Social Charter, 435-436 legitimate expectations, 683-685, 687-688, Structural Funds, 150-151 UK Constitution, 401, 403 prisoners' rights, 531 Evidence Saville Tribunal on Bloody Sunday, 1-2 compulsion, obtained under legal, 317-318 European Convention on Human Rights, False imprisonment, 67, 709 Family life, right to respect for 317-318 fair trials, 316-317 assisted reproduction, 71-72 interception of communications, 518-519 European Convention on Human Rights, 71-72 Executions. See Death penalty expulsion, 728-729 Executive accountability, 615-616 France, 728-729 autonomy, 545-546 same sex relationships, 728-729 control, 615-616 Federalism delay, 133 centralisation, 618-619 devolution, 7-20 international law, 613, 618-619

Federalism-cont. regionalisation, 618-619 UK Constitution, 391, 394-396, 398, 401 Fiji, 619-621, 623-624 Fines, 127 Firearms, 718 Food Food Standards Agency, 327 powers of entry, 314 prisoners' rights, 722 Football offences, 134 Force. See Use of force Fox hunting, 348-349, 520 France assimilation, lack of, 540-542 compensation, 329-331 constitutional law, 727-728 criminal charges, 144, 146-148 deportation, 728-729 disciplinary proceedings, 144-146 driving offences, 146-148 European Convention on Human Rights, 144-148 fair trials, 144-148 family life, right to respect for, 728-729 independent and impartial tribunal, 145-146 judiciary, independence of, 331-333 marriage, acquisition of nationality through, 540-542 medical treatment, 329-331 nationality, acquisition of, 540-542 private life, right to respect for, 728-729 public law, 247-248 same sex relationships, 728-729 social security, 145 university professors, independence of. 727-728 warnings, 329-331 Franchise, 406-410 Freedom of assembly blanket bans, 640-641, 644-647 criminal offences, 645-646 European Convention on Human Rights, 630-648 interpretation, 636-637 prior restraint, 640 public protests, 630-648 trespassory assembly, 625, 631, 633, 646 UK Constitution, 413-414, 432 Freedom of expression defamation, 129, 351-357 democracy, 626-627 European Convention on Human Rights, 88-91, 625-648 Human Rights Act 1998, 625-648 judicial review, 673 judiciary, 625-648

politics, 353-357, 625-648

qualified privilege, 351-357, 524

public protests, 625-648

Freedom of thought, conscience and religion, 254-255 Government courts and, 412-413 inhibited, 553 international law, 612-613 modernisation, 315 Northern Ireland, 720 organisations, 491 public authorities, 491 regulation inside, 546-549 representative, 409-410, 414-417 responsible, 410-411 UK Constitution, 409-417 Greater London Authority, 323 Guernsey Bailiff of, 167-177 independent and impartial tribunal, 167-177 judiciary, 515-516 separation of powers, 167-177 Guilty but insane verdicts, 123 Gypsies asylum seekers, 319, 714-715 persecution of, 319, 714-715 race discrimination, 704 Habeas corpus, 31-44 accelerated hearings, 40 anomalies in, 41 appeals, 40-41 contempt, 35 custody time limits, 31-32 deficiencies, 32-33 European Convention on Human Rights, 32, 42-43 extradition, 37-38, 41 false imprisonment, 709 history of, 34-35 illegal entrants, 37 judicial review, 33, 39, 41-43 leave for, 39-40

mental health detention, 38-39, 42-43

prerogative writ, as, 33-34

prisoners' release dates, 40

recent operation of, 35-39 refusal of relief, no discretion on, 40

time limits, 40

use of, 31-44

human dignity, 64

injunctions, 64

Harassment

assault, 64

procedural advantages of, 39-41

Freedom of expression-cont.

UK Constitution, 432

reporting restrictions, 538

statutory interpretation, 630

Freedom of information, 130, 309, 480

Harassment-cont. racial, 564 telephone calls, 64 Health. See Health authorities, Health Ombudsman, Mental Health Review Tribunals, National Health Service Health authorities discretion, 135-136 legitimate expectations, 682-699 resources, 135-136 Health Service Ombudsman internal complaints procedure, exhaustion of, 586 reports, 137, 720 Hereditary peerage, abolition of, 138-139, 193-194 HIV, 131 Home care services, 521 Homelessness administrative decision-making, 113-121 judicial review, 112-113, 652-653, 658 local authorities, 112-121 Homosexuals. See Sexual orientation Hours of work, 706 House of Commons, 139 Human Rights Act 1998, 553 legislation, scrutiny of, 553-555 privileges, reports on, 139 scrutiny, 553-555 standards, reports on, 139 UK Constitution, 407, 410, 429 House of Lords Appointments Commission, role of, 197, 326 delegated legislation, 195-196 dual role of, 166-177 hereditary peerage, 138-139, 193-194 independent and impartial tribunal, 167-177 legislation, scrutiny of, 554-555 life peers, 196-197 Lord Chancellor, 166-177 Lords of Appeal, participation on reform of, overseas comparisons, 199-200 peerage, 138-139, 193-194, 196-197 popularism, 417-418 public protest, 626 reform, 534, 554-555, 720-721 regionally selected members, 197-198 register of members' interests, 534 religious representation, 197 Royal Commission on the Reform of, 176-177, 193-200 membership of, 194

report on, 195-199, 326

separation of powers, 166-177

UK Constitution, 407, 410, 417-418

Scotland, 138

size of, 198

scrutiny, 554-555

vetoes, 195-196

Housing, 132 Human dignity asylum seekers, 62-63 children, 67-68 corporal punishment, 67 custody, treatment in, 65-67 defamation, 74-75 European Convention of Human Rights, 75 fair trials of children, 66 family life, right to respect for, 71-72 harassment, 64 Human Rights Act 1998, 61, 76 legal value, as, 61-76 life sentences, 66 medical treatment, 67-72 persecution, victims of, 62-63 prisoners' rights, 65-67 private life, right to respect for, 72-74 protection of, 62 public authorities, 61-62 publicity, 72-73 racial hatred, incitement to, 74 sado-masochism, 73-74 sexual orientation, 73-74 Human rights. See also Civil liberties, European Charter of Fundamental Rights, European Convention on Human Rights, Human Rights Act 1998 citizens in uniform doctrine, 266-281 Fiji, 620 Human Rights Select Committee, 594 Inter-American Commission on Human Rights, 317, 573 Inter-American Convention on Human Rights, 574 international law, 624 Joint Committee on, 714 public defence, 266-281 Human Rights Act 1998 armed forces, 708-709 citizens in uniform, 278-281 declarations if incompatibility, 359, 365-366 delegated legislation, 358-373 date of enactment of, 359 detention, 708-709 fair trials, 136-137, 360-367 freedom of expression, 625-648 House of Commons, 553 human dignity, 61, 76 Human Rights Act Research Unit, 592-594 Human Rights Digest, 593-594 interpretation, 358, 361-363, 380 judicial review, 655-656, 659, 667, 673 judiciary, 50, 170-171, 177, 252-253, 625-648 legislation, 553-554 legitimate expectations, 136-137, 698 Mental Health Review Tribunal, 514 parliamentary sovereignty, 251

Human Rights Act 1998-cont. Independent and impartial tribunals-cont. prior restraints, 645 Guernsey, 167-177 House of Lords, 167-177 private life, right to respect for, 72-73 proportionality, 95-96, 106-109 judiciary, 170-174, 515 prosecutions, 136-137 Lord Chancellor, 167-177 protests, 625-648 Scotland, 515 public authorities, 476-493, 638 separation of powers, 167-177 public functions, 476-493 Information. See Freedom of information Informers, 309, 712-713 public protests, 625-648 raising points on, 713-714 Inhuman and degrading treatment religion, 254-265 children, 315-316 death penalty, 575-576 retrospectivity, 362 right to life, 278-281 Her Majesty's Pleasure, detention at, 315-316 rule of law, 377 prisoners' rights, 65-66 statutory interpretation, 77-91, 644-648 Injunctions surveillance, 72-73 EC law, 312-313 UK Constitution, 431-434 harassment, 64 ultra vires, 358-360, 362 public authorities, 537 use of force, 278-281 standing, 537 victims, 364 tobacco advertising, 312-313 Hunting, 348-349, 520 Inter-American Commission on Human Rights, 317, 573 Immigration Inter-American Convention on Human Rights, appeals, 527, 716-717 574 arrest, 313 Interception of communications, 72-73 detention of vehicles, 314 Chief Surveillance Commissioner, report of, elections, 522-523 habeas corpus, 37 complaints, 520 illegal entrants, 37 evidence, 518-519 Immigration and Asylum Act 1999, main fair trials, 702 provisions of, 318-319 foreign, 702 Immigration and Nationality Directorate's police, 518-519 casework programme, report on, 320 privacy, 702 Immigration Appeal Tribunal, report, 703 powers of, 527 International law. See also Treaties and judicial review, 652-656, 658, 660-662, conventions 665-666 accountability, 615-616 leave to enter, 528 Australia, 617 leave to remain, 528 autonomy, 615 exceptional, 527, 716-717 centralisation, 618-619 penalties, 314 Commonwealth, 606-624 standing, 717-718 constitutional modelling, 606-624 statistics, 135 customary law, 622-623 Immunity. See also Public interest immunity democratic deficit, 616 direct effect, 612 criminal cases, 519 legal profession, 725 domestic effect of, 606-624 police, 143, 721 dualism, 614 public interest, 519 executive. Scotland, 349-350 control, 615-616 sovereign, 708 judiciary and, 616-617 Impartiality. See Bias, Independent and impartial federalism, 613, 618-619 tribunals Fiji, 620 Implied repeal doctrine, 250 governmental organisations, 612-613 Incitement to racial hatred, 73 human rights, 624 Independent and impartial tribunals international engagement, 615 disciplinary hearings, 145-146 interpretation, 613 employment tribunals, 134 judiciary, 616-617 European Convention on Human Rights, legal positivism, 614 145-146 monism, 614

regionalisation, 618-619

France, 145-146

International law-cont. regulation, 613-619 South Africa, 610-611, 622-623 sovereignty, 612, 615 International treaties and conventions. See Treaties and conventions Interpretation. See also Statutory interpretation Caribbean Constitutions, 575-578 death penalty, 575-578 delegated legislation, 358, 361-363, 379-380 discretion, 372 European Convention on Human Rights, 381-382 Fiii, 620-621 freedom of assembly, 636-637 Human Rights Act 1998, 358, 361-363, 380 international law, 613 interpretation, 603 judiciary, 379-380 Norway, 603

Irrationality, 529, 683-684, 688-689, 691-693,

Journalists' sources, 519 Judges. See Judiciary Judgment area of, 369-370 Criminal Cases Review Commission, 369 decision-making, 368-369 discretion, confusion with, 372-373 distinguishing, 368-375 facts, finding of, 368-369 function of, 369 judiciary, 372-373 nature of, 368-369 objectivity of, 368 special education provision, 369-370 Judicial review access to, 656-662

South Africa, 622, 623

sovereignty, 229-230 Intimidation, 141-142

Ireland, 14-17, 313

698-699

Administrative Court, establishment of, 700 administrative decision-making, 110-122, 494-514, 670-674, 678-679 streamlining, 653-656, 667 administrative law, 669-670, 676-677 appeals, 101-105, 653-655, 667 armed forces, 680 asylum, 654, 665 birds, shooting of, 320 case loads, 649-668 case management, 663 certiorari, 232 citizenship, 320-321 common law, 232-234 Community Legal Service, 657

constitutional law, 235-237

Index Judicial review-cont. constitutional rights, explicit recognition of, 672-674 costs, 659-661 criminal cases, 659 Crown Office review, 649-668 delegated legislation, 528-529 democracy, 669-670, 672-673, 676-677, 679-680 errors, 231-232 EC law, 320 European Convention on Human Rights, 674, 677-681 European Union, 238-239 filtering, 662-664 firearms, 718 freedom of expression, 673 growth in, 652 habeas corpus, 33, 39, 41-43 homelessness, 112-121, 652-653, 659 Human Rights Act 1998, 655-656, 659, 667, immigration, 652-653, 658, 660-662, 665-666 influence of, 113-121 legitimate expectations, 670, 674-676, 688-690, 692, 697-698 jurisdiction, 232-233 leave, 662-664, 666-667 legal aid, 656-657, 659-662, 667 legal representation, distribution of, 657-659, 667 Legal Services Commission, 656 legal theory, 237-239 legislation, 231-234, 236, 238, 595-605 legitimacy, 236 legitimate expectations, 670, 674-676, 688-690, 692, 697-698, 718-719 life sentences, 672 limited focus of, 117-120 local authorities, 112-121 mandamus, 231-232 merits review, 679-680 modern view, 235-237 natural justice, 321 normative foundations, 231-235 Norway, 595-605 outcomes, 649-651 Parliament, 233-237, 595-605 sovereignty, 376, 669-671, 674 Parliamentary Commissioner for

Compensation, 27 permission, 662-664, 666-667 political theory, 237-239 proportionality, 92-109, 320-321, 676-678 public authorities, 486-488 public/private law divide, 234-235 quality assurance, 659 reasoning, 670-672 regulation, 664-667

Judicial review-cont. Judiciary-cont. public protests, 625-648 remedies, 231-232, 700, 718-719 research background, 651-652 restraint, 50-51, 598-599, 617 rule of law, 669-681 Scotland, 306, 515 Saville Tribunal on Bloody Sunday, 1-2, 53 scrutiny of, 55-59 separation of powers, 669 separation of powers, 45-60 settlement, 649-650, 664-668 South Africa, 470-471 sexual orientation, 680 sovereignty, 213 sources, 652-653 statistics, 700 sovereignty, 236-237 statutory interpretation, 379 statistics, 663-667 temporary, 515 substantive hearings, 650, 663-665 trade union immunity, 378 summary judgments, 662 UK Constitution, 243, 431-434 ultra vires, 232, 235-236, 671-672 United States, 51, 601 Wednesbury unreasonableness, 675-679 Jury trials, 526-527, 560 activism, 544-545, 598, 601 Law Officer, role of, 307 appointments, 123-124, 307 Lawrence, inquiry on Stephen, 141 Australia, 469-474 Legal advice and assistance, 307 automatic disqualification, 456-475 Legal aid bias, 45-60, 324, 331-333, 456-475, access to courts, 517 515-516 civil, 656 causes, 464-467 Community Legal Service, 657 citizens in uniform doctrine, 266-267 costs, 659-661 delegated legislation, 379-380 judicial review, 656-657, 659-662, 667 discretion, 372-373 Funding Code, 656-657, 661-662 disqualification, 456-475 Legal Services Commission, 656 EC law, 249 public interest, 657 European Convention on Human Rights, report on, 701 250-251, 515 Legal order, 340-342 executive and, 51-53, 170-171, 377-378 Legal positivism expansion, 544-545 international law, 614 fair trials, 306 parliamentary sovereignty, 375 favours, 464-467 public law, 374-376 financial interests, 457-472 sovereignty, 224-228 France, 331-333 Legal profession freedom of expression, 625-648 access to lawyers, 711 Guernsey, 515-516 barristers, keeping up with legal High Court, appointment of, 700 developments and, 322 House of Lords reform, 721 EC law, 523 Human Rights Act 1998, 50, 170-171, 177, European Convention on Human Rights, 252-253, 625-648 independent and impartial tribunals, immunity, 725 170-174, 515 judicial review, 657-659, 667 international law, 616-617 solicitors' rights of entry to police stations, judgment, 372-373 535 legislation, role in passing, 170-171 life prisoners, 377-378 terrorism, 711 Legal professional privilege, 128-129 Lord Chancellor, 516 Lords of Appeal in Ordinary, role of, 175 Legal Services Commission, 123, 656 Legal Services Complaints Commissioner, 123 maximum number of, 124, 306-307 Legal Services Consultative Panel, 123 natural justice, 55-56 Legal Services Ombudsman, 123, 720 nemo judex rule, 456-475 New Zealand, 469-471 Legal theory administrative law, 237-239 non-financial interests, 457-472 judicial review, 237-239 part-time, 306, 517 Pinochet case, 55, 58-59, 172-173, 456-473 legal positivism, 224-228 politics, 375 political theory, 205-239

public law, 205-239

sovereignty, 205-239

public controversy, 47-50

public inquiries and, 48-49, 52-55

Legislation. See also Delegated legislation Australia, intergovernmental applicability of, 19-20

consent to, 205-206 Crown, 17-20

devolution, 7-20

European Charter of Fundamental Rights,

184-185

House of Commons, 553-555

House of Lords, 554-555

Human Rights Act 1998, 553-554

intention, 8-11

inter-governmental applicability of, 7-20 judicial review, 231-234, 236, 238, 595-605

judiciary, 170-171 Norway, 595-605

parliamentary power, 595-605

power, 8-11

presumption of obedience to, 17-20

Scotland, 348-349

scrutiny, 554

sovereignty, 224-225

UK Constitution, 247 United States,

consent to, 205-206

intergovernmental applicability of, 19-20

Legitimate expectations abuse of power, 683-684, 687, 689, 691,

696, 698

administrative decision-making, 688-690, 693, 695, 697

administrative law, 682-683, 695-697

armed forces, 529 consultation, 687

Criminal Injuries Compensation, 529 death penalty, 573-581

discretion, 688-689, 694-695

EC law, 695

education, 136

elections, pledges before, 136

fair trials, 136-137

fairness, 683-685, 687-688, 691

hardship, 694

health care, 682-699

Human Rights Act 1998, 136-137, 698 irrationality, 683-684, 688-689, 691-693, 698-699

judicial review, 670, 674-676, 688-690, 692, 697-698, 718-719

policy or practice,

departing from, 684

replacement of, 685, 689-690, 696

precedent, 691

proportionality, 697-698 prosecutions, 136-137

public authorities, 682-699

public interest, 682, 684, 686, 690, 692

reasons, 690-691

separation of powers, 692-693

standard of review, 688-692, 694-697, 699

Legitimate expectations-cont.

substantive, 682-699

treaties and conventions, 573-581

Wednesbury unreasonableness, 683, 688, 690, 692-693, 695-699

Liability. See EC law

Liberalism, 409-414, 424-428, 437

Liberty, 408-409

Life, right to. See Right to life

Life sentences

executive, 377-378

human dignity, 66

judicial review, 672

judiciary, 377-378

mandatory, 536

release from, 377-378, 536-537

whole life tariff, 5236

Limitation periods. See Time limits

Local authorities

children in care, 724-725

discretion, 373-373 duty of care, 538

homelessness, 112-121

judicial review, 112-121

negligence, 724-725

psychiatric harm, 539

sexual abuse, 724-725

Local Government Ombudsman, 586

Locus standi. See Standing Lord Chancellor

dual role, 166-177, 561

House of Lords, 166-177

independent and impartial tribunal, 167-177

judiciary, 516

separation of powers, 166-177

Lords of Appeal in Ordinary, role of, 175

Maladministration

compensation, 24-28

councillors, conduct of, 532-533

injustice, 201-204

meaning, 22-23

Parliamentary Commissioner for Administration, 22-28, 201-204

planning blight, 201-204

public sector ombudsmen, 589-590

remedies, 23-28

Malicious prosecution, 328

Mandamus, 231-232

Margin of appreciation

European Convention on Human Rights, 446, 639, 641-642

Wednesbury unreasonableness, 642-643

Marriage

France, 540-542

monarchy, 569-570

nationality acquired through, 540-542

Medical treatment

assisted reproduction, 71-72

battery, 67

Medical treatment-cont. Monarchy-cont. hereditary principle, 570-571 children, 68-69 marriage, 569-570 compensation, 329-331 consent, 67-68 religion, established, 5-6, 569 Roman Catholics, 5-6, 569 definition, 68 succession, 568-572 European Convention on Human Rights, 69, Monetary policy, 163-164 71-72 Monism, 614 false imprisonment, 67 Motor vehicles, premises as, 128 family life, right to respect for, 71-72 France, 329-331 National Health Service, 130 human dignity, 67-72 National security, 315, 701-702, 710, 714-715 mental disabilities, 67, 68-69 Nationalisation, 418-419 refusal 68 Nationality resources, allocation of, 70-71 assimilation, lack of, 540-542 warning of risks, 329-331 Member state liability, 126 France, 540-542 marriage, acquired through, 540-542 Mental disabilities. See also Mental Health race discrimination, 564-565 Review Tribunal detention, 38-39, 710-711 arbitrators, 719-720 bias, 719-720 European Convention on Human Rights, 42-43, 710-711 complaints, right to comment on, 321 judicial review, 321 guilty but insane verdicts, 123 judiciary, 55-56 habeas corpus, 38-39, 42-43 schools, exclusion from, 324 hospital, admission to, 130-131 medical treatment, 67, 69-70 Needs, 312, 369-370, 372 Negligence nearest relative, 130-131 advice, 539 property of persons with, holding, 315 reform of Mental Health Act 1983, 131 care, children in, 724-725 dyslexia, 724 Scotland, 130 education, 724 Mental Health Review Tribunal administrative decision-making, 494-514 local authorities, 539 public functions, 724-725 case law, 496-497 Nemo judex rule, 456-475 Guide to Members, 498-499 hearings, 499-500 New Labour, 428-431 Human Rights Act 1998, 514 New Zealand bias, 58, 469-471 judicial review, 494-514 judiciary, 469-471 legal representation, 495 medical members, role of, 506-508 religion, 260 Non-discrimination. See Discrimination 'nature or degree', meaning of, 502-503 Non-governmental organisations, 491 outcomes, 498 powers of, 131, 496-497, 504-505 Northern Ireland. See also Saville Tribunal on Bloody Sunday preliminary hearings, 398-399 armed forces, 12-13, 268-272 procedure, 497, 505-513 citizens in uniform doctrine, 268-272 fairness of, 499 Crown, reserved matters on, 9-10, 12-14 psychopathy, 502 government, lifting of suspension of reasons, 494-495, 499-500, 508-514 reports, 711 devolved, 720 Northern Ireland Executive, devolution to, research, 494-514 statutory criteria, 496, 499, 501-504 325 Metaconstitutionalism, 399-403 Parliamentary Commission for Administration, report of, 325 Military service. See Armed forces, Citizens in police, 325, 536 uniform Ministers, accountability of, 130 seizure, 13 Misfeasance in public office, 539, 723-724 UK Constitution, 402 Monarchy. See also Crown use of force, 268-272 abdication, 568-569 Constitution, 595-597 Australia, referendum on, 2-6, 609-610

Civil List, 703

Commonwealth, 572

constitutional law, 568-572

European Convention on Human Rights,

603-605

interpretation, 603

Norway-cont. judicial review, 595-605 legislation, 595-605 parliament, 595-605 priority clauses, 604

UN Covenant on Economic, Social and Cultural Rights, 604

Official secrets, 701-702 Ombudsman. See Types of Ombudsman (eg Health Ombudsman)

Parliament. See also House of Commons, House of Lords, Parliamentary Commissioner for Administration, Parliamentary sovereignty constitutional law, 211 constitutional watchdogs, 553-555 defamation, 533, 556-559 democracy, 553-555 Human Rights Act 1998, 251 Ireland of, relationship with UK, 14-17 judicial review, 233-237, 595-605

Norway, 595-605 privilege, 140, 556-559 proceedings, 533 proportionality, 98-101, 106

legislation, 595-605

representation, 406-410 Parliamentary Commissioner for Administration

access, 585-586 administrative action, wrongful, 21-30 compensation, 24-28

complaints handling, 587 damages, 21-30 errors of law, 27

filtering process, abolition of, 585-586

judicial review, 27 maladministration, 23-28, 201-204

Northern Ireland, 325 powers of, 23-25 reasons, 201-204 remedies, 21-30 reports, 137, 720

Parliamentary sovereignty, 98-101, 106,

206-210, 212-220 absolute, 375

book review on, 153-155 EC law and, 206-207, 249-250

European Convention on Human Rights, 380-382, 444-446, 449-450

Human Rights Act 1998, 251 judicial review, 376, 669-671, 674

legal positivism, 375 Privy Council, 246

UK Constitution, 393-395, 406, 437 Participation, 343-345, 417-420

Passport control British Visitor Passport, 311 EC law, 126-127

Passport control-cont. race discrimination, 311

Pensions Ombudsman, 531-532

Peerage

hereditary, abolition of, 138-139, 193-194 House of Lords, 138-139, 194-194, 407-408 Scotland, 138

UK Constitution, 407-408 Pensions Ombudsman, 137

Persecution

asylum seekers, 62-63, 319, 714-715

gypsies, 319, 714-715 meaning of, 319

non-state agents, by, 714-715

social groups, 63 victims of, 62-63

Planning, 201-204, 725-726

Pluralism, 392-393

armed forces assisting the, 267-268 arrest, questioning following, 140 citizens in uniform doctrine, 267-268, 274-275

detention, reviews of, 326-327

discrimination, 528 duty of care owed to, 722 immunity, 143, 721

interception of communications, 518-519

Northern Ireland, 325, 536

powers, 267 protests, 638 searches, 140

solicitors' right of entry, 535

statistics, 536 victimisation, 528

Political theory

administrative law, 237-239 judicial review, 237-239 legal theory, 205-239

public law, 205-239 sovereignty, 205-239 Politics

constitutional law, 374 defamation, 351-357

European Convention on Human Rights, 453-454 freedom of expression, 351-357, 625-648

judiciary, 375 UK Constitution, 342-343, 374-383,

405-437

Pollution, 126, 705. See also Environment Popularism, 415-417

Powers of entry, 314 Precedence. See Sovereignty Precedent, 691

Prerogative, 216-217, 220 Prescriptions, 308

Primary Care Trusts, 130 Prisoners' rights

disciplinary proceedings, 65-66

Prisoners' rights-cont. Proportionality-cont. reasonableness, 279-281 food, 722 human dignity, 65-67 reasons for incorporation of, 94-96 inhuman and degrading treatment, 65-66 regulation, 293 racist behaviour, 722 separation of powers, 101-105 Prisons. See also Prisoners' rights status in English law of, 93-94 ombudsman, 587 statutory interpretation, 98 reports, 141, 722-723 ultra vires, 99-101 statistics, 723 Wednesbury unreasonableness, 93, 94, 97-99, Privacy 101-103, 109, 676-678 broadcasting, 124, 517-518 Prosecutions fair trials, 702 consent to, 307 interception of communications, 702 Director of Public Prosecutions, 560-561 Private life, right to respect for disclosure, 141 deportation, 728-729 fair trials, 136-137 France, 728-729 Human Rights Act 1998, 136-137 human dignity, 72-74 Law Officer's role, 307 Human Rights Act 1998, 72-73 legitimate expectations, 136-137 publicity, 72-73 malicious, 328 same sex relationships, 728-729 reasons for not, 560-561, 717 sexual orientation, 73-74, 712, 728-729 Protests. See Public protests surveillance, 72-73 Psychiatric harm, 538 Privilege Public authorities defamation, 129, 351-357 accountability, 482-483, 485-486, 492 devolution, 525-526 advice, 538-539 freedom of expression, 129, 351-357, 524 altruism, principle of, 483-484 legal professional, 128-129 'authority', 481 parliamentary, 140 churches, as, 256, 258 qualified, 129, 351-357, 524 common callings, parallels with, 488-490 self-incrimination, privilege against, 525-526 definition, 476-486, 638 waste, 525 EC law, 484-486, 488-490 Privileges European Convention on Human Rights, defamation, 556-559 490-493 House of Commons, 139 European Court of Justice, 484-485 parliamentary, breach of, 556-559 freedom of information, 479-480 reports on, 139, 314, 326, 534, 721 functional tests, 480-481 Scotland, 347-350 governmental organisations, 491 waiver of, 558-559 horizontal effect, 476, 490 Privy Council, 246 human dignity, 61-62 Property and constitutions, 336-337 Human Rights Act 1998, 476-493, 638 Proportional representation, 444 injunctions, 537 Proportionality, 92-109 institutional tests, 480-481 adjudicative problems, 105-107 appeals, 93, 101-105 judicial review, 484-488 citizens in uniform doctrine, 278-281 legitimate expectations, 682-699 negligence, 538-539 citizenship, 320-321 non-governmental organisations, 491 constitutional objections to, 98-105 public funding, 481-482 dangerous dogs, 293 public functions, 476-493 EC law, 92, 95-96, 103-09 persons certain of whom functions are, European Convention on Human Rights, 639-642 486-490 Human Rights Act 1998, 95-96, 106-109 public interest, 482-484 institutional problems, 105-108 public officials, separate legal personality of, judicial review, 92-109, 320-321, 676-678 scope of, 107-108 public/private functions, 486 judiciary, role of, 98-101, 107-108 religion, 255-258

services.

standing, 537

general interest, 488-490

provision of, 488-490

legitimate expectations, 697-698

public protests, 639-642

objections to introduction of, 96-105

Parliamentary sovereignty, 98-101, 106

Public authorities-cont. statutory basis of, 482 vertical rights, 476, 490 Public defence

citizens in uniform doctrine, 266-281 human rights, 266-281 use of force, 266-272, 278-281

Public finance, 523 Public inquiries

Arms to Iraq Inquiry, 1 chairmanship, 1

judiciary and, 48-49, 52-55 litigation during and after, 53-55

scandals, suitability for, 1

Saville Tribunal on Bloody Sunday, 1-2 Public interest

accountability, 482-483 criminal cases, 519 immunity, 309, 519 informers, 309

legal aid, 657 legitimate expectations, 682, 684, 690, 692 public authorities, 482-484

Public international law. See International law Public law. See also Public/private law divide cross-fertilisation, 159-165, 240-253

France, 247-248 import and export of, 159-165, 240-253 legal positivism, 374-376

legal theory, 205-239 political theory, 205-239

private law claim, defence to, 719 UK Constitution, 391-392

Public order, 141-142

Public participation, 343-345, 417-420 Public protests

democracy, 630

European Convention on Human Rights, 625, 627-628

freedom of assembly, 630-648 freedom of expression, 625-648

House of Lords, 626 Human Rights Act 1998, 625-648

judiciary, 625-648 physical obstructions, 628

police, 638

proportionality, 639-642 statutory interpretation, 630

trespassory assembly, 625, 631, 633, 646

Public sector. See also Public sector ombudsman accountability, 335-336 audits, 335-336

Public sector ombudsmen. See also Particular types of ombudsman

access, 585-586

administrative law, 590-591 Citizen's Charter, 583-584

Commission, proposed, 584-585, 587

Public sector ombudsmen-cont.

complaints, 583-586

relationship with other bodies dealing with, 586-587

functions of, 588

integration, 582, 584-585 jurisdiction, 588-589

maladministration, 589-590

present system, 582-584 publicity, 586

report of, 533 review of, 582-593, 720

Public/private law divide common values in, 337-339

judicial review, 234-235 public authorities, 486 religion, 262

Publicity, 72-73

Quangos, 524

Ouasi-federalism, 396

Queen's Bench Division, Vice-President of,

Queen's Counsel, appointment of, 123-124

Race discrimination

British Visitor Passports, 311 burden of proof, 566

care, children in, 311 direct, 563, 565

Directive on, 562-567

disadvantage, measures to prevent or compensate, 566

EC law, 562-567 employment, 564

equal treatment, formation of body to promote, 566

gypsies, 703-704 harassment, 564 indirect, 563-565

'knowingly aids', 310-311

nationality discrimination, 564-565

prisoners, 722 remedies, 566

sanctions 566 secondary parties, 703-704 South Africa, 188-189

unreasonableness, 704 victimisation, 528, 566

Racial hatred, incitement to, 74

Rationality, 529, 683-684, 688-689, 691-693. 698-699

Reasonableness. See also Wednesbury

unreasonableness arrest, 535-536

citizens in uniform, 280 proportionality, 279-281

use of force, 268-272

Reasons

Director of Public Prosecutions, 560-561

[2000] P.L. WINTER © SWEET & MAXWELL AND CONTRIBUTORS

Reasons-cont. legitimate expectations, 690-691 Mental Health Review Tribunal, 494-495, 499-500, 508-514 Parliamentary Commissioner for Administration, 201-204 prosecuting, reasons for not, 560-561, 771 Referendums, 4-5 Refugees. See Asylum Regions centralisation, 618-619 federalism, 618-619 Standing Committee on Regional Affairs, Registrar of Civil Appeals, abolition of, 123 Regulation accountability, 290 Better Regulation Task Force, 282-283, 288-305 dangerous dogs, 282-305 failure of, 282-305 government, inside, 546-549 international law, 613-619 judicial review, 664-667 proportionality, 293 regulatory bodies, 164 targeting, 291-292 telecommunications, 551-552 theory, strategy and practice, 546-549 transparency, 289-290 Religion Australia, 260, 261-262 charities, 260-261 churches as public authorities, 256, 258 definition, 261-262 discrimination, 260 established, 5-6 European Convention on Human Rights, 254-255, 258-259, 263-265 freedom of thought, conscience and religion, Human Rights Act 1998, 254-265 monarchy, 5-6, 569 New Zealand, 260 public authorities, 255-258 churches, as, 256, 258 public/private divide, 262 religious organisations, 260-262 same sex marriages, 258-259 Remedies. See also Compensation, Damages, Habeas corpus, Injunctions administrative action, wrongful, 21-30 judicial review, 231-232, 700, 718-719 maladministration, 23-25 Parliamentary Commissioner for Administration, 21-30

race discrimination, 566

Remuneration, 310, 704-705

Reporting restrictions, 538

Republicanism, 3-6

Res indiciata, 532 Retrospectivity European Convention on Human Rights, 87-88 Human Rights Act 1998, 362 Pensions Ombudsman, 532 Right to life Caribbean Constitutions, 573-575 death penalty, 573-575 European Convention on Human Rights, 439 Human Rights Act 1998, 278-281 use of force, 278-281 Right to respect for private life. See Private life, right to respect for Right to silence, 526 Rights of audience, 123 Riots, 274-277 Rule of law Human Rights Act 1998, 377 judicial review, 669-681 legal order, 340-342 separation of powers, 376-380 UK Constitution, 406, 437 Rule of recognition, 225-227, 387-388 Sado-masochism, 73-74 Same sex relationships, 74, 257-258, 728-729 Saville Tribunal on Bloody Sunday fairness, 1-2 judicial review, 1-2, 53 witnesses, anonymity of, 1-2 Schools choice of, 312, 705 complaints about pupils, anonymity of, 324

disabled pupils, 143 duty of care, 143 exclusion from, 324 natural justice, 324 parental preferences, 312, 705 special educational needs, 312 Scotland accountability, 523 administration, access to papers of previous, 309-310 Crown, devolved matters and, 8-9, 11-12 environmental impact assessment, 126 hereditary peerage, 138 fair trials, 306 fox hunting, 348-349, 520 immunities, 349-350 independent and impartial tribunals, 515 judiciary, 515 legislation, 348-349 mental disabilities, 130 memorandum of understanding, 703 part-time judiciary, 306 privileges, 347-350

public finance, 523

Scotland-cont. Sexual orientation-cont. search warrants, endorsement in England of, family life, right to respect for, 728-729 France, 728-729 sheriffs, temporary, 306 human dignity, 73-74 standards, 347-350 judicial review, 680 transfer of functions, 703 private life, right to respect for, 73-74, 712, UK Constitution, 397-398, 400-401 728-729 Searches religion, 257-258 legal professional privilege, 128-129 sado-masochism, 73-74 police, 140, 536 same sex relationships, 74, 257-258, 728-729 Scotland, 308 sex discrimination, 520-521 statistics on, 536 statutory interpretation, 139 warrants, 709 tenancies, 139 endorsement of Scottish, in England, 308 Ship registration, 126 Secession, 400-401 Silence, right to, 426 Second chamber, composition of, 554-555 Single currency, 155-156 Security services, 315, 710 Smoking, 312-313 Social Chapter, 179 Seizure confidentiality, 701-702 Social Charter, 435-436 devolution, 13 Social constitution, 417-420 motor vehicles, 'premises' as, 128 Social Contract, 421-428 Northern Ireland, 13 Social partnership, 419-420 royalties, 701-702 Social rights, 179, 181, 183-184, 434-436 Self-incrimination, privilege against, 525-526 Social security Sentencing. See also Life sentences appeals, 142, 327 children, 315-316, 537 discretion, 372 executive, by, 316 needs, 372 Her Majesty's Pleasure, detention at, sex discrimination, 311 315-316, 537 winter fuel payments, 311 inhuman or degrading treatment, 315-316 Solicitors, right of entry into police stations, St Kitts & Nevis, 316 535 tariffs, 315-316 South Africa Separation of powers apartheid, 187, 189-190, 621-623 bias, 45-60 bias, 470-471 Guernsey, 167-177 Bill of Rights, 622 House of Lords, 166-177 Commonwealth, 621 independent and impartial tribunals, 167-177 Constitution, 187-192, 610-611, 621-624 judicial review, 669 customary international law, 622-623 judiciary, 56-60 differentiation as discrimination, 189 legitimate expectations, 692-693 discrimination, 187-192 Lord Chancellor, 166-177 differentiation, as, 189 proportionality, 101-105 indirect, 188, 189 rule of law, 376-380 limitations on, 191-192 sovereignty, 218-219 race, 188-189 Settlement, 649-650, 664-668 sex, 188, 190 Sex discrimination test for, 189-190 armed forces, 125 international law, 610-611, 622-623 equal pay, 310 interpretation, 622, 623 sexual orientation, 521-522 judiciary, 470-471 South Africa, 188 race discrimination, 188-189 stereotyping, 190 sex discrimination, 188, 190 unfair dismissal, 521 single mothers, 190 winter fuel payments, 311 sovereignty, 207-209 Sexual abuse, 724-725 stereotyping, 190, 192 Sexual orientation treaties, 623 armed forces, 132-133, 318, 680 Sovereign immunity, 708 deportation, 728-729 Sovereignty. See also Parliamentary sovereignty discrimination, 74 autonomy, 615 European Convention on Human Rights, Bill of Rights, 217

Civil War, 212-216

Statutory interpretation-cont. Sovereignty-cont. strained, 85-86 common law rule, 223 teleological 81-82 democracy, 228 EC law, 206-206, 249-250 tenancies, 139 European Convention on Human Rights, Stereotyping, 190, 192 449 Sterilisation, 525 Structural Funds, 150-151 historical view, 212-222 Subordinate legislation. See Delegated legislation international law, 612, 615 interpretation, 229-230 Succession judiciary, 213 constitutional law, 568-572 monarchy, skipping generation in line of, legal positivism, 224-228 legal theory, 205-239 568-572 legislation, 224-225 Roman Catholics, 569 Supremacy. See Proportionality limits on, 224 modern view, 222-224 Surveillance. See Interception of non-positivism, 228-229 communications Parliamentarian theories, 212-213 political theory, 205-239 Telecommunications regulation, 551-552 prerogative power, exercise of, 216-217, 220 Telephone calls, harassing, 64 Tenancies, 139 Privy Council, 246 proportionality, 98-101, 106 Terrorism, 711 Restoration, 214-216 Thought, freedom of. See Freedom of thought, Royalist theories, 212 conscience and religion rule of recognition, 225-227 Time limits separation of powers, 218-219 custody, 31-32 South Africa, 207-209 habeas corpus, 40 Tobacco advertising, 312-313 state, 449 Special educational needs, 312, 369-370 Torture, 87 St Kitts and Nevis, 316 Trade unions, 378, 421-424 Standards Treaties and conventions Committee on Standards In Public Life death penalty, 578-581 report, 314 law and practice, 549-551 Food Standards Agency, 327 legitimate expectations, 578-581 House of Commons, 139 South Africa, 623 reports on, 139, 314, 326, 534, 721 United States, 616 Scotland, 347-350 Standing aggravated, 142 immigration, 717-718 public order, 142 injunctions, 537 trespassory assembly, 625, 631, 633, 646 Tripartism, 419-420, 428 public authorities, 537 Trusts. See also Breach of trust State immunity, 708 State security, 315, 710 Statutory instruments. See Delegated legislation **UK** Constitution accountability, 411-412, 419 Statutory interpretation developmental method, 80-82 acquis communautaire, 159-160 devolution, 78 Bank of England independence, 163-164 EC law, 80-82 boundaries, extending, 417-420 European Convention of Human Rights, Canada, 244-245 86-91 citizenship, 412 freedom of expression, 630 civil liberties, 413-414 common law, 242, 408-409, 413-414 global method of, 78-80, 86, 89 Commonwealth, 244-247 Human Rights Act 1998, 77-91, 644-648' integrity, law as, 82-85 competition, 164-165 judiciary, 379 constitutional principle and, 425-426 literal, 81 conventions, 242 courts, 408-409, 412-417, 426-428 proportionality, 98 public protests, 630 democracy, 392

devolution, 386-387, 396-398, 402-404, 429

diversity, 394-398

EC law, 159-160, 162

purposive, 81-82

search for order in, 77-78

sexual orientation, 139

UK Constitution-cont. European Convention on Human Rights, 165, 250-251, 386-387, 402-403, 431, 434-36 European Union, 401, 403 executive, 545-546 export of, 159-165 external perspectives on, 159-165 federalism, 391, 394-396, 398, 401 franchise, 406-409 freedom of assembly, 432 freedom of expression, 413-414, 432 government, 412-413 historical perspective, 159-165, 240-253 House of Commons, 407, 410, 429 House of Lords, 407, 410, 416-417 Human Rights Act 1998, 431-434 import of foreign ideas, 159-165 judiciary, 243, 431-434 law, politics and, 342-343 legislation, 247 Liberal, 409-414, 424-428, 437 liberal principles, renewing, 430-431 liberty, 408-409 metaconstitutionalism, 399-403 nationalisation, 418-419 New Labour, 428-431 Northern Ireland, 402 objectives of, 162 Parliamentary representation, 406-409 Parliamentary sovereignty, 393-395, 406, 436-437 peerage, 407-408 pluralism, 392-393, 395 politics of, 342-343, 374-383, 405-437 popularism, 415-417 popular sovereignty, 409-411 public law, 391-392 public participation, 417-420 quasi-federalism, 396 reform, 385-386 regulatory bodies, 164 representative government, 409-410, 414-417 responsible government, 410-411 rule of law, 406, 436-437 rule of recognition, 387-388 Scotland, 400-401 secession, 400-401

quasi-reteransin, 396 regulatory bodies, 164 representative government, 409–414–417 rule of law, 406, 436–437 rule of recognition, 387–388 Scotland, 400–401 Social, 417–424, 428–431 Social Charter, 435–436 Social Contract, 421–428 social dimension, 434–436 social ownership, 418–419 social partnership, 419–420 social reform, 414–417 state power, 159–165 Tory, 406–409

UK Constitution-cont. trade unions, 421-424, 435 Trades Union Congress, 421-424 tripartism, 419-420, 428 unitary conception of, 384-404 flexibility of, 389-394 Victorian, 405-409, 437 voting, 406 watchdogs, 553-555 written, lack of, 242, 384-386 delegated legislation, 321, 358-360, 362 judicial review, 671-672 proportionality, 99-101 UN Covenant on Economic, Social and Cultural Rights, 604 Unfair dismissal, 521 Uniforms. See Citizens in uniform doctrine United States environment, comparison with UK, 156-157 judiciary, 51, 601 legislation, consent, 205-206 intergovernmental applicability of, 19-20 treaties and conventions, 616 Universities, 530, 727-728 Unreasonableness. See Wednesbury unreasonableness Use of force armed forces, 268-272, 278-281 citizens in uniform doctrine, 266-272, 278-281 Human Rights Act 1998, 278-281 lethal, 266-272 Northern Ireland, 268-272 public defence, 266-272, 278-281 reasonableness, 268-272 right to life, 278-281 Vagrancy, 723

Vagrancy, 723 Verdicts, guilty but insane, 123 Victimisation, 528, 566

Wales, 9
Warnings
compensation, 329–331
France, 329–331
medical treatment, 329–331
right to silence, 526
Waste, 525
Watchdogs, 553–555
Water, non-supply of, 142
Wednesbury unreasonableness
ineffectiveness of doctrine, 97–98
judicial review, 675–679
legitimate expectations, 683, 688, 690,
692–693, 695–699

Wednesbury unreasonableness-cont. margin of appreciation, 642-643 proportionality, 93, 94, 97-99, 101-103, 109, 676-678

Welfare benefits. See Social security

Winter fuel payments, 311

Witnesses

anonymity of, 1-2 intimidation, 141-142

public order, 141-142

Saville Tribunal on Bloody Sunday, 1-2

Working time, 706

